



CITY OF LODI COUNCIL COMMUNICATION

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AGENDA TITLE: Adopt Resolutions of the Lodi City Council and Industrial Development Authority Authorizing the Execution of a Exercise of Powers Agreement and Establishing the Lodi Public Financing Authority.

MEETING DATE: July 21, 2010

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Adopt Resolutions of the Lodi City Council and Industrial Development Authority Authorizing the Execution of a Exercise of Powers Agreement and Establishing the Lodi Public Financing Authority.

BACKGROUND INFORMATION: In preparation for the Water Treatment Plant financing, staff recommends that Council create a new financing entity to be known as the Lodi Public Financing Authority.

As Council is aware, cities commonly create third-party entities to facilitate financing transactions for those circumstances when the cities do not have the legal authority to issue bonds themselves. The City currently uses the Lodi Public Improvement Corporation (the "Corporation"), a nonprofit corporation, for this purpose. In these transactions, which typically involve the use of Certificates of Participation ("COPs"), the City enters into a lease or installment sale agreement with the Corporation, and the Corporation assigns its right to receive the lease or installment sale payments to the trustee for the COPs; the COPs are sold to investors. COPs are commonly used when California cities wish to undertake general fund financings, but they can also be used for enterprise financings, such as the City's proposed Surface Water Treatment Facility financing.

Because only governmental entities can issue municipal bonds, when the City uses the Corporation as the counterparty in its transactions, the City has to use COPs. However, in the current economic environment, in which local agencies' general funds are more and more challenged, our financial advisors are concerned that investors may charge an interest rate premium to purchase COPs, even when, as here, the COPs will be used for an enterprise financing rather than a general fund financing.

There is an alternative that does not involve the use of COPs. California law (Government Code Section 6500 et seq., which is the same law which underlies the San Joaquin County Council of Governments and the City's joint powers risk pool) allows two or more local agencies to create a public agency that is separate from the parties to the agreement. This separate public agency, commonly known as a joint exercise of powers agency (or "JPA"), has the powers commonly held by its members *plus* the specific powers specified in the law. One of the powers expressly granted to JPAs is the power to issue revenue bonds in circumstances where a city might otherwise use COPs. Our financial advisors have informed us that the City may benefit – in the form of lower interest rates (and correspondingly, lower water rates) – if it were to use a JPA to issue revenue bonds for its Surface Water Treatment Facility financing instead of COPs.

APPROVED:

A handwritten signature in black ink, appearing to read "Konrad Bartlam".
Konrad Bartlam, Interim City Manager


In order to ensure that the City has the option of choosing the most economical financing model, Staff recommends that Council create the Lodi Public Financing Authority - a JPA - now so that the entity is in place and ready to act if the City chooses to proceed to market.

By definition, a joint powers agency requires two entities to join in its formation. Staff proposes Council form the JPA between the Industrial Development Authority (Lodi Municipal Code Section 2.28) and the City. The Joint Powers Law assumes that the forming entities may be related or under common control as is the case with the City of Lodi and its Industrial Development Authority. (See Government Code Section 6586.7(b)(4)(C)).

Two separate actions are recommended in one joint meeting: the first action for the Industrial Development Authority authorizes the entry of the Joint Powers Agreement; and the second action item for the City Council authorizes the same. As has traditionally been the case, the Mayor is named the chair of the JPA with the Council filling the remainder of the board. On the staff level, the City Manager serves as Executive Director, the Clerk as the Secretary, the City Attorney as General Counsel and the City Treasurer (in Lodi's case the Deputy City Manager) as the JPA Treasurer.

FISCAL IMPACT: Minor increased costs to audit Lodi Public Financing Authority as part of City's annual audit. Also, potential interest savings related to bond financing, resulting in lower water rates.

FUNDING AVAILABLE: Water Fund – Operating Fund 181



Stephen Schwabauer
City Attorney

JOINT EXERCISE OF POWERS AGREEMENT

This JOINT EXERCISE OF POWERS AGREEMENT (this "Agreement") dated as of July 21, 2010, is between the CITY OF LODI, a general law city duly organized and existing under the Constitution and laws of the State of California (the "City"), and the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LODI, a public body corporate and politic organized and existing under the laws of the State of California (the "Industrial Development Authority");

WITNESSETH:

WHEREAS, agencies formed under Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Joint Powers Law") are permitted to provide financing for any of their members in connection with the acquisition, construction and improvement of public capital improvements and other programs of such members; and

WHEREAS, the City and the Industrial Development Authority wish to form an agency under the Joint Powers Law, to be known as the Lodi Public Financing Authority (the "Financing Authority"), for the purpose of providing an entity which can provide assistance to the Industrial Development Authority and the City in their respective financing undertakings;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the City and the industrial Development Authority do hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.01. Purpose. This Agreement is entered into pursuant to the Joint Powers Law. The purpose of this Agreement is to provide assistance to the City and the Industrial Development Authority (collectively, the "Members") from time to time in connection with their financing programs, or for any other financing purposes authorized under Article 4 of the Joint Powers Law (commencing with Section 6584) (the "Bond Act").

Section 1.02. Creation of Authority. Pursuant to the Joint Powers Law, there is hereby created a joint powers agency to be known as the Lodi Public Financing Authority (the "Financing Authority"). The Financing Authority is a public entity separate and apart from the Members, and shall administer this Agreement. The Financing Authority shall be deemed to be created and to exist as an entity which is authorized to transact business and exercise its powers, upon the adoption of a resolution approving the execution and delivery of this Agreement by the Board of Directors of the Industrial Development Authority and the City Council of the City.

Section 1.03. Board.

(a) Composition of Board: Chair. The Financing Authority shall be governed by a Board of Directors (the "Board") consisting of five (5) directors. Each member of the City Council of the City shall be a member of the Board by virtue of being a member of the City Council of the City. All voting power of the Financing Authority shall reside in the Board.

The Mayor of the City shall act as the Chair of the Board. The Chair shall perform the duties normal to said office and such duties as may be imposed by the Board.

(b) Call, Notice and Conduct of Meetings. All meetings of the Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act of the State of California (constituting Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California).

(c) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Board members present at any meeting at which a quorum is present are required to take any action by the Board.

(d) Time and Place of Regular Meetings. The Board shall conduct a regular meeting on July 21, 2010, at the hour of 7:00 p.m. in the City Council chambers, 221 West Pine Street, Lodi, California. Thereafter, the Board shall provide for its regular meetings. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each of the Members. Unless otherwise provided, regular meetings shall be held on the same date and time as regular meetings of the City Council of the City. If the Secretary does not post an agenda for a regular meeting pursuant to Government Code Section 54954.21, then such failure to post shall be deemed to be a determination by the Chair that no items required discussion and, therefore, that the regular meeting should be cancelled, except as otherwise provided in Section 54954.2.

(e) Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to the Members.

(f) Bylaws. The Board may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

Section 1.04. Treasurer. Pursuant to Section 6505.5 of the Joint Powers Law, the person performing the functions of the Treasurer of the City is hereby designated as the initial Treasurer of the Financing Authority and, as such, shall perform the functions of the treasurer of the Financing Authority, as such functions are set forth in Section 6505.5 of the Joint Powers Law. Pursuant to Section 6505.1 of the Joint Powers Law, the Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Financing Authority and all records of the Financing Authority relating thereto. As treasurer of the Financing Authority, the Treasurer has custody of all of the accounts, funds and money of the Financing Authority from whatever source.

In the event, but only in the event, that the Treasurer holds moneys for the account of the Financing Authority or the Members, the Treasurer shall verify and report in writing at least quarterly to the Board and the Members the amount of money so held, the amount of receipts since the last such report, and the amount paid out since the last such report.

Section 1.05. Auditor. Pursuant to Section 6505.5 of the Joint Powers Law, the person performing the functions of the Treasurer of the City is hereby designated as the initial Auditor of the Financing Authority and, as such, shall perform the functions of the auditor of the Financing Authority, as such functions are set forth in Section 6505.5 of the Joint Powers Law.

As auditor of the Financing Authority, the Auditor shall draw warrants to pay demands against the Financing Authority when the demands have been approved by the Board and shall assure that there is strict accountability of all funds and reporting of all receipts and disbursements of the Financing Authority.

Section 1.06. Other Officers and Employees of the Financing Authority.

(a) Other Officers. In addition to the Chair, the Treasurer and the Auditor, the officers of the Financing Authority shall consist of an Executive Director, a Secretary and a General Counsel, who shall consist of the City Manager, the City Clerk and the City Attorney, respectively. The Board may appoint such assistants to act in the place of the officers of the Authority (other than any Director) as the Board shall from time to time deem appropriate.

(b) Duties of Executive Director. The Executive Director shall perform such functions as are customary in the exercise of such a position, and as may be more specifically provided by the Board from time to time. The Executive Director shall have charge of the day-to-day administration of the Financing Authority and shall execute the directives of the Board. The Executive Director shall sign all contracts on behalf of the Financing Authority, except as may otherwise be provided by resolution of the Board.

(c) Duties of Secretary. The Secretary shall perform such functions as are customary in the exercise of such positions, and as may be more specifically provided by the Board from time to time. The Secretary shall have charge of the records of the Financing Authority and is responsible for recording the minutes of all meetings of the Board.

(d) Duties of General Counsel. The General Counsel shall perform such functions as are customary in the exercise of such positions, and as may be more specifically provided by the Board from time to time.

(e) Other Consultants and Contractors. The Board shall have the power to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of this Agreement.

(9) Miscellaneous. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to

them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Board shall be deemed, by reason of their employment by the Board to be employed by any of the Members or, by reason of their employment by the Board, to be subject to any of the requirements of any of the Members.

Section 1.07. Bonding of Officers. From time to time, the Board may designate officers of the Financing Authority having charge of, handling or having access to any records, funds or accounts or other assets of the Financing Authority, and the respective amounts of the official bonds of such officers and such other persons pursuant to Section 6505.1 of the Joint Powers Law. In the event that any officer of the Financing Authority is required to be bonded pursuant to this Section 1.07, such bond may be maintained as a part of or in conjunction with any other bond maintained on such person by any Member, it being the intent of this Section 1.07 not to require duplicate or over-lapping bonding requirements from those bonding requirements which are otherwise applicable to the Members.

ARTICLE II

POWERS

Section 2.01. General Powers. The Financing Authority shall exercise the powers granted to it under the Joint Powers Law, including but not limited to the powers set forth in the Bond Act and the powers common to each of the Members, as may be necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 2.02. As provided in the Joint Powers Law, the Financing Authority is a public entity separate and apart from the Members.

Section 2.02. Restrictions on Exercise of Powers. The powers of the Financing Authority shall be exercised in the manner provided in the Joint Powers Law and in the Bond Act, and, except for the exercise of those powers set forth in the Bond Act, shall be subject (in accordance with Section 6509 of the Joint Powers Law) to the restrictions upon the manner of exercising such powers that are imposed upon the City.

Section 2.03. Non-Liability of Members and Directors For Obligations of Authority. The debts, liabilities and obligations of the Financing Authority shall not be the debts, liabilities and obligations of any of the Members. No member, officer, agent or employee of the Financing Authority is individually or personally liable for the payment of the principal of or premium or interest on any obligations of the Financing Authority or be subject to any personal liability or accountability by reason of any obligations of the Financing Authority. Nothing herein contained relieves any such member, officer, agent or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligations of the Financing Authority.

In addition, no Member shall assume any liability or responsibility for any debts, liabilities or obligations which may be incurred by the other Member in connection with the issuance of bonds or other obligations of the Financing Authority for the benefit of such other Member.

ARTICLE III

CONTRIBUTION; ACCOUNTS AND REPORTS; FUNDS

Section 3.01. Contributions. The Members may, but are not required to: (a) make contributions from their treasuries for any of the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein, or (d) use their personnel, equipment or property in lieu of other contributions or advances.

Section 3.02. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Financing Authority, the Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust instrument entered into with respect to the proceeds of any bonds issued by the Financing Authority. The books and records of the Financing Authority in the hands of a trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of any of the Members. The trustee appointed under any trust agreement shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement. Said trustee may be given such duties in said trust instrument as may be desirable to carry out this Agreement.

Section 3.03. Funds. Subject to the applicable provisions of any instrument or agreement which the Financing Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 3.04. Annual Budget and Administrative Expenses. The Board shall adopt a budget for administrative expenses, which shall include all expenses not included in any financing issue of the Authority, annually prior to July 1st of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority to the Members equally.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.01. Term. This Agreement shall become effective, and the Financing Authority shall come into existence, on the date of execution and delivery hereof, and this Agreement and the Financing Authority shall thereafter continue in full force and effect so long as either (a) any bonds or other obligations of the Authority remain outstanding or any material contracts to which the Financing Authority is a party remain in effect, or (b) the Financing Authority shall own any interest in any real or personal property.

Section 4.02. Disposition of Assets. Upon the termination of this Agreement, all property of the Financing Authority, both real and personal, shall be divided between the Members in such manner as agreed upon by the Members.

Section 4.03. Notices. Notices hereunder must in writing and will be sufficient if delivered to:

Industrial Development Authority of the
City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: Executive Director

City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: City Manager

Section 4.04. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 4.05. Law Governing. This Agreement is made in the State of California under the Constitution and laws of the State of California, and is to be so construed.

Section 4.06. Amendments. This Agreement may be amended at any time, or from time to time, except as limited by contract with the owners of any bonds issued by the Financing Authority or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 4.07. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 4.08. Successors. This Agreement is binding upon and inures to the benefit of the successors of the respective Members. No Member may assign any right or obligation hereunder without the written consent of the other Member.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF LODI, a municipal corporation

By _____
KONRADT BARTLAM
Interim City Manager

[S E A L]

Attest:

RANDI JOHL, City Clerk

**INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF LODI**

By _____
PHIL KATZAKIAN
Chairperson

[S E A L]

Attest:

RANDI JOHL, Secretary
Industrial Development Authority,
City of Lodi, California

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER
City Attorney



A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE EXECUTION OF A JOINT EXERCISE OF POWERS
AGREEMENT WITH THE INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF LODI, ESTABLISHING THE
LODI PUBLIC FINANCING AUTHORITY

WHEREAS, the Industrial Development Authority of the City of Lodi (the "Industrial Development Authority") and the City of Lodi (the "City") have proposed forming a joint powers authority under the provisions of Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1, of the Government Code of the State of California (the "Joint Powers Law"), for the purpose of creating a public agency which can provide financial assistance to the Industrial Development Authority and the City in connection with the construction of public capital improvements; and

WHEREAS, to that end the City Council wishes at this time to approve the execution and delivery of a Joint Exercise of Powers Agreement between the Industrial Development Authority and the City, establishing the Lodi Public Financing Authority as a joint powers authority under the Joint Powers Law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

Section 1. Establishment of Lodi Public Financing Authority. The City Council hereby approves the establishment of the Lodi Public Financing Authority (the "Financing Authority") under the Joint Powers Law, pursuant to the Joint Exercise of Powers Agreement dated as of July 21, 2010, between the Industrial Development Authority and the City in the form on file with the City Clerk. The appropriate officers of the City are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, said Joint Exercise of Powers Agreement in the name and on behalf of the City.

Section 2. Authorization to Make Necessary Filings. The firm of Jones Hall, A Professional Law Corporation, as bond counsel to the City, is hereby authorized and directed to cause to be prepared, executed, and filed any and all reports, statements, and other documents as may be required in order to implement the establishment of the Financing Authority.

Section 3. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Dated: July 21, 2010


I hereby certify that Resolution No. 2010-124 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 21, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk

RESOLUTION NO. IDA-32

A RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF LODI AUTHORIZING THE EXECUTION OF A JOINT
EXERCISE OF POWERS AGREEMENT WITH THE CITY OF LODI,
ESTABLISHING THE LODI PUBLIC FINANCING AUTHORITY

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WHEREAS, the Industrial Development Authority of the City of Lodi (the "Industrial Development Authority") and the City of Lodi (the "City") have proposed forming a joint powers authority under the provisions of Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1, of the Government Code of the State of California (the "Joint Powers Law"), for the purpose of creating a public agency which can provide financial assistance to the Industrial Development Authority and the City in connection with the construction of public capital improvements; and

WHEREAS, to that end, the Industrial Development Authority wishes at this time to approve the execution and delivery of a Joint Exercise of Powers Agreement between the Industrial Development Authority and the City, establishing the Lodi Public Financing Authority as a joint powers authority under the Joint Powers Law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Industrial Development Authority of the City of Lodi as follows:

Section 1. Establishment of Lodi Public Financing Authority. The Board of Directors of the Industrial Development Authority hereby approves the establishment of the Lodi Public Financing Authority (the "Financing Authority") under the Joint Powers Law, pursuant to the Joint Exercise of Powers Agreement dated as of July 21, 2010, between the Industrial Development Authority and the City in the form on file with the Secretary of the Industrial Development Authority. The appropriate officers of the Industrial Development Authority are hereby authorized and directed to execute, and the Secretary of the Industrial Development Authority is hereby authorized and directed to attest and affix the seal of the Industrial Development Authority to, said Joint Exercise of Powers Agreement in the name and on behalf of the Industrial Development Authority.

Section 2. Authorization to Make Necessary Filings. The firm of Jones Hall, A Professional Law Corporation, as bond counsel to the City, is hereby authorized and directed to cause to be prepared, executed, and filed any and all reports, statements, and other documents as may be required in order to implement the establishment of the Financing Authority.

Section 3. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Dated: July 21, 2010

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PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Industrial Development Authority held on this 21st day of July 2010 by the following vote:

AYES: AUTHORIZING MEMBERS -

NOES: AUTHORIZING MEMBERS -

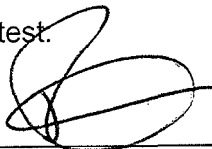
ABSTAIN: AUTHORIZING MEMBERS -

ABSENT: AUTHORIZING MEMBERS -



PHIL KATZAKIAN
Chairperson, Industrial Development
Authority, City of Lodi, California

Attest.



RANDI JOHL, Secretary
Industrial Development Authority,
City of Lodi, California